

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 735 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARGOVANDAS CHHAGANDAS PATEL

Versus

CHANDANJI RAVAJI VIHOL & ORS.

Appearance:

MR PJ VYAS for Petitioner

MR HL JANI for Respondent No. 7

MR GR SHAIKH for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/04/97

ORAL JUDGEMENT

1. This Special Civil Application has arisen out of the proceedings taken by the petitioner by filing an application under sec. 70(b) read with sections 29, 32G and 32(1)(B) of the Bombay Tenancy and Agricultural Lands Act, 1947 (hereinafter referred to as the Act, 1947). The dispute pertains to the lands bearing Survey Nos.709, 709/1 and 710 situated in the sim of Village Pilvai

Taluka Vijapur.

2. The respondent No.6 contested the aforesaid application of the petitioner by filing a written statement on 15-1-1976. In the written statement, the respondent No.6 has admitted that the petitioner is cultivating the lands as tenant and is paying ganot (rent) and later on paying crop share and further it is stated that the respondent No.5 is receiving the rent on behalf of other respondents. The A.L.T. and Mamlatdar vide its order dated 20th July, 1976, passed in Tenancy Case No.32/75 accepted the plea of the petitioner. The order has been made declaring the petitioner to be the tenant and further unauthorised possession was ordered to be recovered under sec.84 of the Act, 1947, and the same was to be restored to the petitioner. The respondent No.3, Suthar Prahladbhai Nanalal, filed Tenancy Appeal No.271/76 before Deputy Collector, Mehsana. The respondents No.1 and 2 are the purchasers of the land and they have also filed an appeal No.284/76. Both these appeals came to be dismissed by the appellate authority under the order dated 30th June, 1977. The appeal of the respondents No.1 and 2 was dismissed only on the ground that they are not the landlords and have no locus-standi to file an appeal. The matter was taken up by the respondents No.1, 2 and 3 to the Tribunal by filing the revision applications No.787/77 and 788/77. Both these revision petitions were consolidated and heard by the Revenue Tribunal. The revision applications came to be allowed vide order dated 6-7-1978 and the matter was remanded to the A.L.T and Mamlatdar for fresh hearing and to allow the parties to lead evidence, if they desire. On remand, the A.L.T. and Mamlatdar, Vijapur, under its order dated 23-11-1978 held that the petitioner is a tenant and is entitled to purchase the land in dispute. Further order has been made that the proceedings under sec.84 of the Act, 1947, be initiated and the possession be restored to the petitioner. This order was not challenged by any of the parties. However, the respondent No.1 made an application on 8-1-1979 to Collector, Mehsana, requesting to take the order dated 23rd November, 1978, of the A.L.T. and Mamlatdar, Vijapur in revision under sec.76A of the Act, 1947. However, it appears that the Collector has taken the matter in revision and made the order on 23rd March, 1979, that if the respondents felt aggrieved of the said order then they may file an appeal. Then the respondents No.1 and 2 filed the revision application under sec.76 of the Act, 1947, before the Gujarat Revenue Tribunal against the aforesaid order of the Collector. That revision application came to be decided on 16-1-1980 and

the order of the Collector aforesaid was held to be incompetent and without jurisdiction. The respondents No.1, 2 and 3 filed appeal No.28/80 before the Dy. Collector on 24th January, 1980, challenging the order of the A.L.T. and Mamlatdar dated 23rd November, 1978. The appellate authority under its order dated 21st July, 1980 allowed the appeal and the order of the A.L.T. and Mamlatdar dated 23rd November, 1978, was set aside. The petitioner then filed the revision application before the Tribunal which came to be dismissed under the order dated 19th October, 1982. Hence, this Special Civil Application.

3. Heard the learned counsel for the parties. Earlier while remanding the matter by the Tribunal under its order dated 6-7-1978, the Tribunal has found that the evidence on affidavit which was not subject to the cross-examination could not have been relied on by the A.L.T. and Mamlatdar while deciding the matter in favour of the petitioner. One of the petitioner's witnesses was also not found to be worth of any reliance and the matter has been remanded. After remand, none of the parties produced any further evidence. So in the second revision application, the Tribunal has held that the petitioner has not produced any evidence whatsoever, and as such, his claim of tenancy has rightly been declined by the appellate authority. It is true that the petitioner has not produced any other evidence on remand of the matter, but the learned counsel for the petitioner placed on record of this Special Civil Application a copy of the written statement of one of the respondents wherein there are categorical admissions that the petitioner was the person who was cultivating the land and paying the rent to the land holders through their administrator. The admission is the best evidence and in case it is in the form of written statement then no formal proof thereof is required. What value has to be given to the averments made in the written statement as well as whether it is an admission sufficient to accept the right of the petitioner, is a matter to be considered and decided by the Tribunal. But this substantive piece of evidence in the form of pleadings in the written statement was not even referred to by the Tribunal what to say to consider the same. In case, as contended by the counsel for the petitioner, these pleadings which are admissions in favour of the petitioner of the respondent of his character as tenant then certainly it is a substantive piece of evidence on which his claim could have been accepted. But I do not want to express any opinion on the merits of the matter as what I feel is that this matter deserves to be remanded back to the Tribunal to

consider this piece of evidence on merits and then to decide the matter in accordance with law.

4. It is settled law that in case a relevant piece of evidence is not considered by the Tribunal then it is a serious illegality in the judgment and further it is an error apparent on the face of the order. Much emphasis has been laid by the learned counsel for the respondent that at no stage this admission in the written statement has been relied by the petitioner in the proceedings before the authorities below. Though there is no reference of this admission in the judgment of the Tribunal, but if a piece of evidence is on the record irrespective of what worth it is, it is to be considered and now the learned counsel for the petitioner has referred and relied on this admission before this Court. When this Court has come to know about this evidence, it will not ignore the same only, on the ground that it was not referred or relied upon by the petitioner before the authorities below and this evidence is a material evidence to the controversy, and non-consideration of the same vitiates the order of the Tribunal.

5. In the result, this Special Civil Application succeeds in part. The order of the Gujarat Revenue Tribunal, Ahmedabad, dated 19-10-1982 made in revision application No.TEN.B.A.873/80 is set aside and the matter is remanded back to the Tribunal to decide the matter after considering the evidence "written statement filed by the respondent, Naranbhai Harjivanbhai Suthar", and decide the matter in accordance with law. The matter is old one, and as such, it is expected of the Tribunal to decide the same within a period of four months from the date of receipt of certified copy of this order. It is further made clear that the Tribunal is free to consider the matter with a point of view to remand the matter to the lower authority also, if it considers necessary. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-